Supreme Court, U.S.
FILED

No. 96 103 JUL 16 1996

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

LARRY EUGENE HOOD - - - - *Petitioner*

versus

COMMONWEALTH OF KENTUCKY - *Respondent*

On Petition for Writ of Certiorari to the Court of Appeals of Kentucky

---

PETITION FOR WRIT OF CERTIORARI

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July 16, 1996

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32 pp

QUESTION PRESENTED FOR REVIEW

Whether the police department violated the Fourth Amendment to the United States Constitution in making a warrantless search and seizure of Mr. Hood inside his residence, and Mr. Hood's motor vehicle which was parked in Mr. Hood's driveway where there was no hot pursuit of Mr. Hood and where prior to traveling to Mr. Hood's residence, the police had information that a pedestrian had been struck by a motor vehicle which had left the scene, and that according to motor vehicle registration records, that vehicle was registered to Mr. Hood at Mr. Hood's address.

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1995

LARRY EUGENE HOOD - - - - - - - - *Petitioner*

v.

COMMONWEALTH OF KENTUCKY - - - - *Respondent*

PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE BASIS FOR JURISDICTION

The Order sought to be reviewed was entered on June 9, 1995.

The Court of Appeals denied rehearing in an Order entered August 25, 1995. The Supreme Court of Kentucky denied discretionary review on April 17, 1996.

This court has jurisdiction to review the judgment of the Court of Appeals of the Commonwealth of Kentucky on a Writ of Certiorari pursuant to Title 28 U.S.C. §§1257, 2101, 2102, and 2104.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED

The primary Constitutional provision involved in this case is the Fourth Amendment to the United States Constitution which reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In addition, Section 1 of the Fourteenth Amendment to the United States Constitution is also involved in this case and states as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

On January 28, 1994 at approximately 5:00 a.m., Mr. Larry Eugene Hood was arrested in his home in Bullitt County, Kentucky, by Jefferson County Police Officer Gray.

On March 21, 1994, the Jefferson County Grand Jury, under the strength of Jefferson County Police Officer Gray's testimony, returned a true bill of indictment against Mr. Hood charging him with the offenses of assault in the first degree, operating a motor vehicle while under the influence of intoxicants, and failing to stop and render aid pursuant to KRS 508.010, KRS 189A.010(2)(b), and KRS 189.580(1), respectively.

On May 25, 1994 Mr. Hood filed a Motion to suppress evidence obtained through the warrantless and illegal arrest by Jefferson County Police Officer Gray at Mr. Hood's home in Bullitt County, Kentucky. In the Motion, Mr.

Hood specifically argued that the evidence obtained from and subsequent to the illegal arrest, either directly or indirectly should be suppressed as fruit of the poisonous tree pursuant to the Fourth Amendment to the United States Constitution and the United States Supreme Court case of *Wong Sun* v. *United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 416, 9 L.Ed.2d 441, 445 (1963).

The Jefferson Circuit Court, Division Three, which was the trial court, scheduled the case for a hearing on Mr. Hood's Motion to Suppress for June 1, 1994.

At the suppression hearing, Officer James Gray of the Jefferson County Police Department testified on behalf of the Commonwealth. Immediately prior to the hearing, the Commonwealth stipulated that Mr. Hood was hand-cuffed and arrested in his home in Bullitt County, Kentucky. (A true copy of the transcript of the suppression hearing may be found in the Appendix.)

Officer Gray testified as to the circumstances of the arrest of Mr. Hood as follows:

> "That's in Jefferson County. Yes. And we believe that he was a DUI, a drunk driver, and that he hit a pedestrian, knocking him through the windshield. He stopped his vehicle, pulled the pedestrian out of his car, dumped him on the road and left the scene. The subject who was hit got a good look at the person who struck him, pulled him out of the car, and he also got the license number of the vehicle that struck him as it was pulling away.
>
> Upon talking to the subject and getting this information, we ran a registration on the license plate. It came back to the same type vehicle that the subject said struck him - excuse me, the victim said struck him, and while Officer Thomas waited at the scene with the victim for the ambulance to get there, and started getting reports and information, I went out to this 331 Glenview Road. The subject vehicle was in

> the driveway with a matching license plate number; the engine was warm; it had significant damage to the front end, just as the victim stated would have. I saw the subject standing in the living room on the telephone.
>
> After I inspected the car, I started to approach the front door. The subject had been on the telephone, had hung up; he pushed his door open, and said, I _____ up, didn't I? And I said, well, I believe you might have. And at that time, I walked on into his house and started talking to the subject, who was by himself. His name was Larry Eugene Hood. He was obviously intoxicated, smelled of alcoholic beverages, was unsteady, slurred speech. At the time, I informed Mr. Hood of what I thought he had done, and he wouldn't deny it, and wouldn't admit it. The only admittance, you might say, was the fact that when he opened the door, he told me that he had screwed up.
>
> And I asked him if he would come back over to the scene and see if the subject could identify him. He said he would. He gave me his driver's license. He didn't give me any problems at all. And consequently, we charged him with the DUI, assault first and hit and run -"

Prior to his entry into Mr. Hood's home, Officer Gray stated no facts which supported his "belief" that the driver of the vehicle which was involved in the vehicle-pedestrian accident, was in fact drunk.

Furthermore, Officer Gray did not testify as to the location of the vehicle-pedestrian accident other than it occurred *on* Old Shepherdsville Road in Jefferson County. Officer Gray provided no information as to the seriousness of the pedestrian's injuries. Officer Gray admits that he did not seek any arrest or search warrant from an impartial magistrate based upon the above information, but instead immediately drove to Mr. Hood's residence. He admitted his first reaction was to examine Mr. Hood's mo-

tor vehicle which was parked in his driveway immediately adjacent to his residence. After searching the vehicle, Officer Gray then entered Mr. Hood's residence. Officer Gray does not state how he came to the conclusion that Mr. Hood was alone in the house.

Officer Gray did not recall reading Mr. Hood his *Miranda* rights and did specifically accuse him of committing the crimes. Thereupon, Officer Gray hand-cuffed Mr. Hood and took him back to the location of the motor vehicle accident on Old Shepherdsville Road.

Officer Gray in his testimony at the suppression hearing further specifically admitted that there was no pursuit, and that his reason in not obtaining any warrant was that he did not know how long it would take to get such a warrant, and he "assumed" Mr. Hood might have been DUI and he wanted to get him "downtown" as quickly as possible to be tested.

Later, Officer Gray seized Mr. Hood's vehicle by having it towed from Mr. Hood's residence and taken to the Jefferson County Police Department's tow in lot. This action was not approved by an impartial magistrate.

On August 9, 1994, the trial court entered an Order suppressing the evidence which the Commonwealth had obtained from its illegal arrest of Mr. Hood citing to the Kentucky case of *Churchwell* v. *Commonwealth*, Ky. App., 843 S.W.2d 336 (1993), and the United States Supreme Court case of *Wong Sun* v. *United States*, 371 U.S. 471 (1963). (A copy of the Order may be found in the Appendix.)

On August 18, 1994 the Commonwealth filed a Notice of Appeal to the Court of Appeals of the Commonwealth of Kentucky from the trial court's suppression Order.

On June 9, 1995, the Court of Appeals of the Commonwealth of Kentucky entered an opinion reversing and re-

manding the trial court's suppression Order because it stated that Police Officer Gray had probable cause to believe that Mr. Hood was the person who had committed a crime because of information which Officer Gray learned at Mr. Hood's residence, specifically including the fact that Mr. Hood's vehicle was warm and damaged, and that Mr. Hood appeared to be intoxicated to Officer Gray. (A copy of the Opinion may be found in the Appendix.)

Mr. Hood filed a Petition for a rehearing in the Court of Appeals of Kentucky on June 30, 1995 which was denied on August 25, 1995. On September 26, 1995, Mr. Hood filed a Motion for discretionary review with the Supreme Court of Kentucky which was denied on April 17, 1996, thus making the opinion of the Court of Appeals of Kentucky the final decision of the state courts. (A copy of both Orders may be found in the Appendix.)

ARGUMENT FOR ALLOWANCE OF THE WRIT

The Supreme Court should grant the Petition for Writ of Certiorari to the Court of Appeals of Kentucky because the state court has decided an important federal question in a way which conflicts with relevant decisions of this Court.

The Fourth Amendment to the United States Constitution contained in the Bill of Rights states as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

This Court has held that the states are bound by the Fourth Amendment to the United States Constitution through the due process clause of the Fourteenth Amend-

ment to the United States Constitution. Furthermore, this Court in the case of *Mapp* v. *Ohio*, 367 U.S. 643 (1961), held that all evidence obtained by searches and seizures in violation of the Fourth Amendment to the United States Constitution were inadmissable in state courts by virtue of the due process clause of the Fourteenth Amendment which guarantees a right to privacy, free from unreasonable state intrusion.

Mr. Hood was eventually charged with one felony count, being a violation of KRS 508.010 which states as follows:

> "(1) A person is guilty of assault in the first degree when:
>
> (a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
>
> (b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.
>
> (2) Assault in the first degree is a Class B felony."

In this case, Police Officer Gray did not have information that the pedestrian had suffered any *serious* physical injury. In the case of *Luttrell* v. *Commonwealth*, Ky., 554 S.W.2d 85 (1977), the highest court of Kentucky held that a police officer who had been shot in the chest had not suffered a serious physical injury as that term is defined in the Kentucky Revised Statutes, specifically, KRS 508.010 and KRS 500.080(15). As previously noted, there was no testimony concerning the seriousness of the pedestrian's injuries at the suppression hearing.

In addition, Officer Gray gave no testimony as to the circumstances under the which the pedestrian was struck by the motor vehicle. The mere fact that the pedestrian

was struck by a motor vehicle and was injured, is not, in and of itself, evidence of probable cause for a violation of assault in the first degree. Pedestrians are injured every day by motor vehicles. In the vast majority of such cases, the operator of the motor vehicle is not guilty of any criminal offense, much less guilty of assault in the first degree.

Nevertheless, based on the above information, together with motor vehicle registration records as to the address of the registered owner of the motor vehicle which struck the pedestrian, Officer Gray travelled to the curtilage of Mr. Hood's residence and searched and seized Mr. Hood's vehicle.

This Court, in a long running series of cases, has held that for a seizure of a person to be valid under the Fourth Amendment to United States Constitution, the agent for the government must state facts which constitute probable cause to believe that the party arrested is guilty of a felony. See *Giordenello* v. *United States*, 357 U.S. 480 (1958); *Henry* v. *United States*, 361 U.S. 98 (1959); *Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Beck* v. *Ohio*, 379 U.S. 89 (1964); *Whitely* v. *Warden of Wyoming Penitentiary*, 401 U.S. 560 (1971); *Brown* v. *Illinois*, 422 U.S. 590 (1975); *Taylor* v. *Alabama*, 457 U.S. 687 (1982); *Hayes* v. *Florida*, 470 U.S. 811 (1985).

Furthermore, this Court has held that evidence obtained by an unlawful search or seizure immediately prior to the arrest cannot be used to furnish probable cause for the arrest. *Dunaway* v. *New York*, 442 U.S. 200 (1979), *Smith* v. *Ohio*, 494 U.S. 541 (1990). In this case, Officer Gray searched and seized Mr. Hood's vehicle in his driveway, next to his home. This vehicle was not parked in a public place but was on the curtilage of Mr. Hood's residence where he had a right to expect some privacy. The Court of Appeals of Kentucky incorrectly relied upon this evidence in determining that Officer Gray had probable cause to arrest Mr. Hood.

The fact of the matter is that the unlawful search and seizure of Mr. Hood's vehicle at his residence points out that Officer Gray did not have probable cause. If Officer Gray had probable cause to arrest Mr. Hood he would have done so forthwith, without continuing in his investigation and search for additional evidence.

As previously stated, Officer Gray thereupon went inside of Mr. Hood's residence where he made the arrest.

In the case of *Stoner* v. *California*, 367 U.S. 43 (1964), this Court stated the law on lawful search and seizures under the Fourth Amendment as follows:

"The search of the petitioner's room by the police officers was conducted without a warrant of any kind, and it therefore 'can survive constitutional inhibition only upon a showing that the surrounding facts brought it within one of the exceptions to the rule that a search must rest upon a search warrant"

Later, in the case of *Mincey* v. *Arizona*, 437 U.S. 385 (1978), this Court stated the law on Fourth Amendment searches and seizures as follows:

> "The Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principal that 'searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.'"

No arrest or search warrant was ever obtained. As such, Officer Gray's conduct was *per se* unreasonable and violative of the Fourth Amendment to the United States Constitution, unless the Commonwealth could show some fact which would bring it within an exception. Not only can the Commonwealth not bring this case within an exception, but also, the violation of the Fourth Amendment was particularly egregious in this case, because the location of the arrest and search was inside Mr. Hood's home.

In the case of *Payton* v. *New York*, 445 U.S. 573 (1980), this Court held that a warrantless entry into a suspect's home to make a routine felony arrest even where the police officers had probable cause violated the Fourth Amendment to the United States Constitution.

The Commonwealth consistently has claimed that because the police officer suspected that Mr. Hood was intoxicated, there was an exigent circumstance entitling Officer Gray to make a warrantless home arrest. This precise question was considered by this Court in the case of *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984), the Court holding the suspected intoxication of a suspect was not an exigent circumstance.

Respectfully, it is very clear that the Commonwealth's actions in failing to obtain a search or arrest warrant and instead proceeding directly to Mr. Hood's home and subsequently arresting Mr. Hood violated the Fourth Amendment to the United States Constitution and the Court of Appeals opinion to the contrary should be reversed.

Respectfully submitted,

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APPENDIX

RENDERED: JUNE 9, 1995; 2:00 P.M.

NOT TO BE PUBLISHED

COURT OF APPEALS OF KENTUCKY

No. 94-CA-1997-MR

COMMONWEALTH OF KENTUCKY - - - - - *Appellant*

v.

LARRY EUGENE HOOD - - - - - - - - - *Appellee*

Appeal From Jefferson Circuit Court
Honorable William E. McAnulty, Jr., Judge
Action No. 94-CR-665

ORDER REVERSING AND REMANDING

—Entered Aggust 9, 1994

BEFORE: COMBS, GUDGEL, and SCHRODER, Judges.

GUDGEL, JUDGE: This is an appeal by the commonwealth from an order entered by the Jefferson Circuit Court adjudging appellee's arrest to be illegal and ordering the suppression of any "evidence obtained from his arrest." For the reasons stated hereafter, we reverse and remand.

For purposes of the suppression proceeding, the relevant facts were essentially undisputed. On January 28, 1994, one Jeff Roeder was walking along Shepherdsville Road in Jefferson County when a motor vehicle left the road and struck him. Roeder went through the vehicle's windshield and the upper part of his body was lodged inside. The vehicle stopped and the driver dislodged Roeder, laid him on the ground, and then left the scene. When Jefferson County police arrived on the scene minutes later, Roeder provided them with the license number of the vehicle which had struck him. A subsequent computer check revealed that the vehicle was registered to appellee at a

Bullitt County address. Jefferson County Officer James Gray then went to the Bullitt County address, where he observed that appellee's registered vehicle was parked in the driveway. Gray further observed that the vehicle was damaged in a manner which was consistent with Roeder's account of the accident, and that the vehicle's engine was still warm. As Gray approached appellee's house, the front door opened and appellee exclaimed to him, "I f_____ up didn't I?" Gray then noted that appellee appeared to be intoxicated because he smelled of alcohol, his speech was slurred, and he was unsteady on his feet. At this point appellee was arrested by Gray and was taken back to Jefferson County. He was charged with the felony of first-degree assault, as well as with the misdemeanor offenses of DUI and leaving the scene of an accident.

After appellant was indicted for the charged offenses, his counsel filed a motion to suppress on the ground that his arrest was illegal. After a hearing the court sustained the motion and ordered the suppression of any "evidence obtained from his arrest." This appeal followed.

At the outset we note that appellant incorrectly argues that Gray, as a Jefferson County police officer, possessed the authority to arrest appellee in Bullitt County. Obviously, a Jefferson County police officer such as Gray has no jurisdiction, in his capacity as a police officer, to exercise any of his legally-conferred police powers while in another Kentucky county unless either the latter county requests him to do so or the arrest stems from a "hot pursuit" into that county. See KRS 70.540. Neither of these special circumstances was present here. Nevertheless, we agree with appellant that even though Gray was not authorized to arrest appellee in his capacity as a Jefferson County police officer, Gray was authorized to arrest appellee in his capacity as a private person who may make an arrest "when a felony has been committed in fact, and he has probable cause to believe that the person being arrested has committed it." KRS 431.005(4).

Here, the undisputed evidence adduced during the suppression hearing was sufficient to support a felony conviction for first-degree assault based upon appellee's wanton conduct in striking and seriously injuring a pedestrian while intoxicated and operating a motor vehicle. Moreover, since the victim obtained the vehicle's license number, since the vehicle was traced to appellee's residence where it was found to be warm and damaged in a manner consistent with the accident's description, and since appellee appeared to be intoxicated when he opened the door and exclaimed "I f_____ up didn't I?" Gray also had probable cause to believe that appellee was the person who had committed the felony. Thus, Gray was clearly entitled to arrest appellee while acting in the capacity of a private person. KRS 431.005(4). It follows, therefore, that the court erred by finding that appellee's arrest was illegal. *Cf. State* v. *Filipi,* 297 N.W.2d 275 (Minn. 1980) (city police officers possessed the arrest powers of private persons while outside their jurisdiction).

In light of our conclusions to this point in the opinion, we need not address appellant's remaining contention.

For the reasons stated, the court's suppression order is reversed and this cause is remanded for further proceedings .consistent with our views.

ALL CONCUR.

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ATTORNEYS FOR APPELLEE:
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JEFFERSON CIRCUIT COURT

THIRD DIVISION

No. 94CR0665

COMMONWEALTH OF KENTUCKY - - - - - *Plaintiff*

v.

LARRY EUGENE HOOD - - - - - - - *Defendant*

ORDER

Before the Court is a Motion brought by the Defendant, Larry Eugene Hood, against the Commonwealth to suppress the evidence obtained from an allegedly illegal arrest. Mr. Hood moves to have the evidence excluded on the ground that the arrest made by a Jefferson County Police Officer outside of his jurisdiction in Bullitt County was illegal and thus violative of the Fourth Amendment of the United States Constitution.

The facts of the case are as follows. The victim, Jeffrey Roeder, was walking beside the road in the 7900 block of Shepherdsville Road in Jefferson County, Kentucky, when he was struck by a motor vehicle that left the road. Mr. Roeder was propelled into the windshield of the car where he was lodged with the upper portion of his body inside the vehicle. The car stopped, the driver pulled Mr. Roeder from the car, laid him on the ground, and then drove off. The police arrived and Mr. Roeder was able to provide the police with the license number of the car that hit him. A computer check revealed that the vehicle was registered to the Defendant at an address in Bullitt County. Officer James Gray of the Jefferson County Police proceeded to the Defendant's listed address. When he arrived the Defendant's car was parked with the motor warm and damage to the front of the car and the windshield. Officer

Gray then proceeded up to the front door of the house, where the Defendant answered and immediately made an incriminating statement. Mr. Hood was observed as having slurred speech, a very staggered gate, and smelled strongly of alcohol. Mr. Hood was then arrested and taken back to the crime scene.

KRS 70.540 gives county police officers "jurisdiction coextensive with the whole county for which they are appointed." This statute gives no explicit or implicit grant of the power to arrest outside of the officer's delineated jurisdiction. The only time such power is granted is in two instances. The first is when an officer is in hot pursuit. The second exception is provided in KRS 431.007(l) which outlines an officer's arrest powers when assisting in another jurisdiction. That provision states "A policeman . . . *officially requested* by a law enforcement agency in another county in Kentucky to assist in any matter within the jurisdiction of the requesting agency shall possess the same powers of arrest in the requesting county as he possesses in the county in which he is a police officer." (Emphasis added.] Therefore, the arrest could have been legal only if the officers were in hot pursuit or officially requested by Bullitt County to assist in the matter.

It is unquestioned that Bullitt County did not request assistance from the Jefferson County Police Officers nor do the facts of this case support an exception based upon "hot pursuit." Instances of hot pursuit generally occur when an officer observes a crime, or what he believes is the commission of a crime, and then pursues that suspect based upon those observations. In the present case the officers received information after the accident, and then proceeded to Mr. Hood's residence. At no time were they in actual pursuit of Mr. Hood so there can be no "hot pursuit" exception.

The Commonwealth also asserts that Jefferson County Police officers do have the power to arrest in Bullitt County. As stated above, there is no grant of the power to arrest outside an officer's jurisdiction. Furthermore, if the con-

tention were accepted as true then the Kentucky legislature would have had no reason to adopt KRS 431.007(1) because the police would already have had such power. The Commonwealth's assertion must fail.

In addition, in *Churchill* v. *Commonwealth*, Ky. App., 843 S.W.2d 336 (1992) the court held that a stop made by a park ranger outside of his jurisdiction was an illegal stop and that any evidence obtained directly or indirectly from that illegal stop is tainted as "fruit of the poisonous tree." See *Wong Sun* 371 U.S. 471 (1963). Similarly, officer Gray was acting outside his jurisdiction when he arrested Mr. Hood in Bullitt County, making the arrest illegal. The fact that *Churchill* dealt with a park ranger and not a county police officer is irrelevant because KRS 148.056 provides that a park ranger "shall have all of the powers of peace officers and shall have in all parks and property . . . the same powers with respect to criminal matters and enforcement of the laws relating thereto as sheriffs, constables, and police officers in their respective jurisdictions." Accordingly, Officer Gray had no authority to arrest Mr. Hood at his home in Bullitt County and any observations, statements, and other evidence obtained directly or indirectly from the illegal arrest are to be excluded.

ORDER

Therefore, IT IS HEREBY ORDERED AND ADJUDGED that Defendant's Motion to suppress evidence obtained from his arrest be and is hereby granted.

This 8th day of August, 1994.

/s/ William E. McAnulty, Jr.
William E. McAnulty, Jr.
Judge, Jefferson Circuit Court

cc: Edward A. Mayer
Stockard R. Hickey

COURT OF APPEALS OF KENTUCKY

No. 94-CA-1997-MR

COMMONWEALTH OF KENTUCKY - - - - - *Appellant*

v.

LARRY EUGENE HOOD - - - - - - - - - *Appellee*

Appeal From Jefferson Circuit Court
Honorable William E. McAnulty, Jr., Judge
Action No. 94-CR-665

ORDER DENYING PETITION FOR REHEARING

—Entered August 25, 1995

BEFORE: COMBS, GUDGEL, and SCHRODER, Judges.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

/s/ Wil Schroder
Judge, Court of Appeals

SUPREME COURT OF KENTUCKY

95-SC-805-D
(94-CA-1997)

LARRY EUGENE HOOD - - - - - - - - *Movant*

v.

COMMONWEALTH OF KENTUCKY - - - - *Respondent*

Jefferson Circuit Court
No. 94-CR-665

ORDER DENYING DISCRETIONARY REVIEW

—Entered April 17, 1996

The motion for review of the decision of the Court of Appeals is denied.

King, J., not sitting.

/s/ Robert F. Stephens
Chief Justice

JEFFERSON CIRCUIT COURT

THIRD DIVISION

No. 94-CR-0665

Commonwealth of Kentucky - - - - - - Plaintiff

v.

Larry Eugene Hood - - - - - - - Defendant

Deponent: Officer James Gray

Date: June 1, 1996

TRANSCRIPTION OF VIDEOTAPE

APPEARANCES

For the Plaintiff:

Hon. Stockard R. Hickey, III
514 West Liberty Street
Louisville, Kentucky 40202

For the Defendant:

Hon. Edward A. Mayer
Hon. Matthew W. Stein
Starks Building, Suite 490
Louisville, Kentucky 40202

Also Present:

Larry Eugene Hood

4

VERSUS LARRY EUGENE HOOD. THE MATTER IS BEFORE THE COURT, 1ST DAY OF JUNE. THIS MATTER HAS BEEN ASSIGNED FOR A PRETRIAL CONFERENCE. DEFENDANT IS PRESENT, REPRESENTED BY

COUNSEL. MR. MAYER, MR. STEIN. COMMONWEALTH IS REPRESENTED BY MR. HICKEY. THE DEFENDANT FILED A MOTION TO SUPPRESS, AND THAT MOTION WAS FILED MAY 25, 1994. PARTIES READY TO PROCEED ON THE MOTION?

MR. HICKEY: YES, YOUR HONOR.

MR. MAYER: YES, JUDGE. JUDGE, SINCE

WE WENT OFF THE RECORD, THE COMMONWEALTH — ONE OF THE ISSUES BEFORE WE WENT OFF THE RECORD WAS WHETHER OR NOT MR. HOOD WAS HANDCUFFED AT HIS HOME. AND WHILE WE WERE OFF THE RECORD, THE COMMONWEALTH HAS AGREED OR STIPULATED THAT, IN FACT, HE WAS HANDCUFFED AT HIS HOME.

JUDGE MCNULTY: AT HIS HOME IN BULLITT COUNTY?

MR. MAYER: HIS HOME IN BULLITT COUNTY, YES, SIR.

JUDGE MCNULTY: WELL, THEN, FACTUALLY, IS THERE A DISPUTE THAT CONSTITUTED AN ARREST?

MR. HICKEY: NO JUDGE, THERE IS NOT. THE ONE DISPUTE THAT MAY BE REMAINING IS THE FACT THAT THE OFFICER RECALLS THAT THERE WAS A BULLITT

5

COUNTY OFFICER THERE AT THE SCENE WHO HAD ASSISTED, OR AT LEAST BACKED UP OFFICER GRAY, WHEREAS I DON'T BELIEVE THE DEFENDANT RECALLS THAT.

JUDGE MCNULTY: OKAY. LET'S THEN PROCEED ON THAT ISSUE WITH THE STIPULATION. THAT'S THE ONLY FACTUAL ISSUE IN DISPUTE. RAISE YOUR RIGHT HAND. DO YOU SWEAR OR AFFIRM THE TESTIMONY YOU ARE ABOUT TO GIVE BE THE TRUTH, THE WHOLE TRUTH, NOTHING BUT THE TRUTH?

A. I DO.

DIRECT EXAMINATION BY MR. HICKEY:

Q. WOULD YOU STATE YOUR NAME FOR THE RECORD, PLEASE?

A. OFFICER JAMES GRAY, JEFFERSON COUNTY POLICE DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN WITH JEFFERSON COUNTY POLICE?

A. 24 YEARS.

Q. DID YOU HAVE OCCASION TO BE INVOLVED IN THE ARREST OF A LARRY EUGENE HOOD ON JANUARY 28TH OF 1994?

A. YES, I DID.

Q. WHERE DID THAT ARREST TAKE PLACE?

6

A. THE ARREST TOOK PLACE AT 331 GLENVIEW ROAD.

Q. CAN YOU TELL THE COURT VERY BRIEFLY THE CIRCUMSTANCES OF THAT ARREST?

A. OKAY. WE BELIEVE THAT MR. HOOD HAD BEEN INVOLVED IN A SERIOUS INJURY ACCIDENT OVER ON OLD SHEPHERDSVILLE ROAD.

Q. IS THAT LOCATED IN JEFFERSON COUNTY?

A. THAT'S IN JEFFERSON COUNTY, YES. AND WE BELIEVE THAT HE WAS A DUI, A DRUNK DRIVER, AND THAT HE HIT A PEDESTRIAN, KNOCKING HIM THROUGH THE WINDSHIELD. HE STOPPED HIS VEHICLE, PULLED THE PEDESTRIAN BACK OUT OF HIS CAR, DUMPED HIM ON THE ROAD AND LEFT THE SCENE. THE SUBJECT WHO WAS HIT GOT A GOOD LOOK AT THE PERSON WHO STRUCK HIM, PULLED HIM OUT OF THE CAR, AND HE ALSO GOT THE LICENSE NUMBER OF THE VEHICLE THAT STRUCK HIM AS IT WAS PULLING AWAY.

UPON TALKING TO THE SUBJECT AND GETTING THIS INFORMATION, WE RAN A REGISTRATION ON THE LICENSE PLATE. IT CAME BACK TO THE SAME TYPE VEHICLE THAT THE SUBJECT SAID STRUCK HIM — EXCUSE ME, THE VICTIM SAID STRUCK HIM, AND WHILE OFFICER THOMAS WAITED AT THE SCENE WITH THE VICTIM FOR THE AMBULANCE TO GET THERE, AND STARTED GETTING REPORTS

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AND INFORMATION, I WENT OUT TO THIS 331 GLENVIEW ROAD. THE SUBJECT VEHICLE WAS IN THE DRIVEWAY WITH A MATCHING LICENSE PLATE NUMBER; THE ENGINE WAS WARM; IT HAD SIGNIFICANT DAMAGE DONE TO THE FRONT END, JUST AS THE VICTIM HAD STATED WOULD HAVE. I SAW THE SUBJECT STANDING IN THE LIVING ROOM ON THE TELEPHONE.

AFTER I INSPECTED THE CAR, I STARTED TO APPROACH THE FRONT DOOR. THE SUBJECT HAD BEEN ON THE TELEPHONE, HAD HUNG UP; HE PUSHED HIS DOOR OPEN AND SAID, I FUCKED UP, DIDN'T I? AND I SAID, WELL, I BELIEVE YOU MIGHT HAVE. AND AT THAT TIME, I WALKED ON INTO HIS HOUSE AND STARTED TALKING TO THE SUBJECT, WHO WAS BY HIMSELF. HIS NAME WAS LARRY EUGENE HOOD. HE WAS OBVIOUSLY INTOXICATED, SMELLED OF ALCOHOLIC BEVERAGES, WAS UNSTEADY, SLURRED SPEECH. AT THAT TIME, I INFORMED MR. HOOD OF WHAT I THOUGHT HE HAD DONE, AND HE WOULDN'T DENY IT, AND HE WOULDN'T ADMIT IT. THE ONLY ADMITTANCE, YOU MIGHT SAY, WAS THE FACT THAT WHEN HE OPENED THE DOOR, HE TOLD ME THAT HE HAD SCREWED UP.

AND I ASKED HIM IF HE WOULD COME BACK OVER TO THE SCENE AND SEE IF THE SUBJECT COULD IDENTIFY HIM. AND HE SAID HE WOULD.

HE GAVE ME HIS DRIVER'S LICENSE. HE DIDN'T GIVE ME ANY PROBLEMS

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AT ALL. AND CONSEQUENTLY, WE CHARGED HIM WITH THE DUI, ASSAULT FIRST AND HIT AND RUN —

Q. HE DID AGREE TO COME BACK TO THE SCENE WITH YOU?

A. YES.

Q. DID YOU THEN HANDCUFF HIM AND TAKE HIM BACK TO THE SCENE?

A. YES, I DID.

Q. WHY DID YOU PUT HANDCUFFS ON HIM AT THAT POINT?

A. WELL, IT'S — YOU'VE GOT A SUSPECT HERE YOU'RE SUSPECTING OF A FELONY. I DIDN'T REALLY BELIEVE HE WOULD CAUSE ME A PROBLEM, BUT ANYTIME WE PUT ANYBODY IN OUR VEHICLE THAT'S IN THIS TYPE OF SITUATION, IT'S STANDARD POLICY TO HANDCUFF THEM,

SO THAT'S BASICALLY WHY.

Q. WERE THERE ANY OTHER OFFICERS PRESENT AT THE DEFENDANT'S HOUSE?

A. YES, SIR. THERE WAS EITHER A HILLVIEW OR BULLITT COUNTY POLICE OFFICER PRESENT. HE WAS A LIEUTENANT ON THEIR DEPARTMENT. I DON'T RECALL. I DON'T KNOW ANY OFFICERS OUT THERE. I DON'T KNOW WHAT HIS NAME WAS, BUT HE WAS THERE WHEN I WAS TALKING TO MR. HOOD AND ACCOMPANIED HIM AND TOOK HIM OFF TO MY CAR.

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Q. IS IT HILLVIEW POLICE DEPARTMENT?

A. THAT'S — THIS IS HILLVIEW, AND I'M ASSUMING IT WAS A HILLVIEW POLICE OFFICER, BUT IT

COULD HAVE BEEN BULLITT COUNTY. LIKE I SAY, WHEN YOU CALL OUT THERE, YOU DON'T KNOW WHO'S GOING TO SHOW UP.

Q. BUT YOU DID RADIO TO BULLITT COUNTY FOR ASSISTANCE?

A. OUR RADIO ROOM DID.

Q. OKAY.

MR. HICKEY: THAT'S ALL I HAVE OF THIS WITNESS, YOUR HONOR.

MR. MAYER: OFFICER GRAY, JUST A FEW QUESTIONS.

A. YES, SIR.

CROSS-EXAMINATION BY MR. MAYER:

Q. YOU INDICATED EITHER YOU OR YOUR RADIO ROOM CALLED BULLITT COUNTY FOR ASSISTANCE?

A. YES, SIR.

Q. BULLITT COUNTY DID NOT CALL YOU FOR ASSISTANCE; IS THAT CORRECT?

A. NO, SIR. BULLITT COUNTY DID NOT CALL US.

Q. AND YOU TOLD US ABOUT YOUR CONVERSATION

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WITH MR. HOOD. YOU NEVER INDICATED ANY TIME THAT YOU READ HIM HIS RIGHTS OR TOLD HIM HE HAD A RIGHT TO REMAIN SILENT. DO YOU RECALL WHEN THAT WAS DONE?

A. I DON'T RECALL. WE WERE IN QUITE A BIT OF A HURRY.

Q. OKAY. HE WAS, IN FACT, HANDCUFFED AT THAT TIME?

A. HE WAS — HE WAS HANDCUFFED, YES, SIR.

Q. WHEN YOU ARRIVED AT THE SCENE, OF-

FICER, AT MR. HOOD'S RESIDENCE, HE WAS ALREADY THERE ON THE PHONE. THERE WAS NO PURSUIT; IS THAT CORRECT?

A. YES, SIR. HE WAS STANDING IN HIS LIVING ROOM ON THE TELEPHONE WITH THE LIGHTS ON.

Q. THERE WAS PURSUIT?

A. NO, SIR.

Q. OKAY.

MR. MAYER: THAT'S ALL, JUDGE.

REDIRECT-EXAMINATION BY MR. HICKEY:

Q. THE FACT THAT THERE WAS NO PURSUIT DID YOU FEEL THAT THERE WERE CIRCUMSTANCES THAT YOU NEEDED TO HURRY UP AND MAKE SURE THAT YOU MADE A DETERMINATION IN THIS CASE?

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A. YES, SIR. SINCE WE WERE UNDER THE ASSUMPTION THAT HE WAS PROBABLY DUI, IN MY PRESENCE HE APPEARED TO BE DUI, I WANTED TO GET HIM DOWNTOWN AND GET HIM TESTED AS QUICKLY AS POSSIBLE.

Q. HOW LONG WOULD IT HAVE TAKEN TO GET A SEARCH WARRANT OR TO POSSIBLY GET A WARRANT IN BULLITT COUNTY?

A. OH, MY GOODNESS. I CAN'T HONESTLY ANSWER THAT BECAUSE I HAVEN'T BEEN INVOLVED IN A SITUATION LIKE THAT. BUT I WOULD SAY IT WOULD BE QUITE A WHILE.

Q. AT THE TIME, DID YOU FEEL THAT THAT WOULD CAUSE THE LOSS OR DESTRUCTION OF IMPORTANT EVIDENCE, SUCH AS HIS BLOOD ALCOHOL CONTENT?

A. YES, SIR, I DID.

MR. HICKEY: NOTHING ELSE, YOUR HONOR.

MR. MAYER: NOTHING FURTHER, JUDGE

JUDGE MCNULTY: DO YOU WANT TO FILE A WRITTEN RESPONSE, MR. HICKEY?

MR. HICKEY: I WOULD, YOUR HONOR.

JUDGE MCNULTY: HOW MUCH TIME DO YOU NEED?

MR. HICKEY: A WEEK, AT THE MOST.

JUDGE MCNULTY: JUNE 8TH?

MR. HICKEY: THAT'S FINE.

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JUDGE MCNULTY: AND IF YOU'LL GIVE ME A LETTER INDICATING THAT THE ISSUE HAS BEEN SUBMITTED, THEN I'LL DECIDE IT.

DO YOU WANT TO FILE A REPLY TO THEIR RESPONSE?

MR. MAYER: JUDGE, WHY DON'T YOU GIVE US A WEEK TO REPLY, AND IF WE'RE NOT GOING TO, WE'LL NOTIFY THE COURT RIGHT AWAY.

JUDGE MCNULTY: OKAY.

MR. MAYER: WE'LL SEND THE LETTERS AND SUBMIT IT.

JUDGE MCNULTY: THEN, BY JUNE 15TH

MR. HICKEY:

MR. MAYER: THE 15TH WOULD BE FINE, YES, SIR.

JUDGE MCNULTY: — EITHER A LETTER OR A RESPONSE IN A LETTER?

MR. MAYER: THAT WOULD BE FINE, JUDGE.

MR. HICKEY: SO, YOU WON'T NEED A SUBMISSION LETTER FROM ME, THEN?

JUDGE MCNULTY: NO. HE'S GOING TO —

MR. MAYER: I'M EITHER GOING TO TELL HIM TO SUBMIT IT OR —

* * * * *

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COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } SS:

I, MONICA S. LIPMAN, A NOTARY PUBLIC, WITHIN AND FOR THE STATE AT LARGE DO HEREBY CERTIFY THAT THE FOREGOING VIDEOTAPE WAS TAKEN AT THE TIME AND PLACE AND FOR THE PURPOSE SET FORTH IN THE CAPTION STATED; THAT THE WITNESSES WERE FIRST DULY SWORN BEFORE GIVING SAID TESTIMONY; THAT THE VIDEOTAPE WAS TRANSCRIBED UNDER MY DIRECTION AND TO THE BEST OF MY ABILITY; THAT ALL OF THE TESTIMONY, OBJECTIONS AND REMARKS OF COUNSEL, AS WELL AS THE RULINGS OF THE COURT WERE MADE AT THE TIME OF THE TAKING OF THE TESTIMONY, ARE CONTAINED HEREIN.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR OF KIN TO THE PARTIES TO THIS ACTION, AND AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID ACTION.

WITNESS MY SIGNATURE THIS 5TH DAY OF JUNE, 1996.

COMMISSION EXPIRES:
SEPTEMBER 9, 1999

/S/ MONICA S. LIPMAN
MONICA S. LIPMAN
NOTARY PUBLIC

Supreme Court, U.S.
FILED
AUG 16 1996
CLERK

(2)

No. 96-103

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

◆

LARRY EUGENE HOOD . . . . . .Petitioner

v.

COMMONWEALTH OF KENTUCKY . . . Respondent

◆

On Petition For Writ Of Certiorari
To The Court Of Appeals Of Kentucky

◆

RESPONDENT'S BRIEF IN OPPOSITION

◆

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12 pp

QUESTION PRESENTED FOR REVIEW

When the Court of Appeals of Kentucky held that Kentucky statutes allow a county police officer to make an arrest in an adjoining county, did it render a final order deciding a federal question in a way that conflicts with applicable decisions of this Court?

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STATEMENT OF THE CASE

Respondent, the Commonwealth of Kentucky, rejects Petitioner's Statement of the Case and submits the following as more accurate and succinct:

On January 28, 1994, Jeffrey Roeder was walking beside Shepherdsville Road in Jefferson County, Kentucky when a motor vehicle left the road and struck him. Roeder's right leg was shattered and his body was propelled head-first through the vehicle's windshield. The vehicle stopped and the driver pulled Roeder back out through the windshield, laid him on the ground, then left the scene. When Jefferson County Police arrived on the scene minutes later, Roeder provided them with the license number of the vehicle which had struck him. A computer check revealed that the vehicle was registered to Petitioner at a Bullitt County, Kentucky address. A Jefferson County Police radio dispatcher called for assistance from Bullitt County authorities, and Officer James Gray of the Jefferson County Police proceeded to Petitioner's listed address. When Officer Gray arrived, he noticed Petitioner's car parked in the driveway with the motor warm and damage to the front of the car and the windshield consistent with Roeder's account of what had happened. As Officer Gray approached Petitioner's house, the front door opened and Petitioner exclaimed "I f_____ up, didn't I?" Gray then noticed that Petitioner appeared to be intoxicated because he smelled of alcohol, his speech was slurred, and he was unsteady on his feet. Petitioner was arrested and taken back to the scene of

the collision, where he was identified by the victim.

The Jefferson County Grand Jury returned an Indictment charging Petitioner with First Degree Assault, Operating a Motor Vehicle Under the Influence of Intoxicants, and Leaving the Scene of an Accident. Petitioner filed a motion to suppress "all observations of the defendant made by any and all police officers and breathalizer (sic) technicians; any statements made by the defendant subsequent to the illegal arrest; the results of any and all field sobriety tests as well as the law enforcement official's observations of the defendant when performing any field sobriety tests." After a hearing, the trial court sustained Petitioner's motion and ordered the evidence suppressed solely because "there is no grant [in the Kentucky Revised Statutes] of the power to arrest outside an officer's jurisdiction."

Because the post-arrest evidence was important to the prosecution's case, Respondent sought an interlocutory appeal of the trial court's order. On June 9, 1995, the Kentucky Court of Appeals rendered an opinion reversing the trial court's order and remanding the case for trial. On April 17, 1996, Petitioner's motion for discretionary review was denied by the Supreme Court of Kentucky.

On June 24, 1996, Petitioner filed another motion to suppress evidence in the trial court. He sought to have the court "suppress evidence obtained from warrantless search and seizure" of his residence. That issue was submitted to the trial court on July 2, 1996, but has yet to be ruled upon by the trial court.

Petitioner has not yet been convicted. A trial is scheduled for October 1, 1996. As of the filing of this Brief, Petitioner is free on bond to await his trial.

REASONS FOR DENYING THE WRIT

THE KENTUCKY COURT OF APPEALS' OPINION DID NOT DECIDE A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

1. The state court has not ruled on the issue presented to this court by Petitioner.

The Fourth Amendment search and seizure question has been briefed but has not yet been decided by the state court. In his June 26, 1996, memorandum to the trial court, Petitioner asserted that the issue he asks this Court to review had not been addressed before. He asserted that the Kentucky "Court of Appeals opinion does not address the issue of the intrusion upon his residence without a warrant...[nor] the search and seizure of himself and his property without a warrant." Petitioner concluded that "this matter was not previously litigated in the Court of Appeals." In his petition filed only twenty days later, Petitioner argued to this Court that the previous ruling had decided a "warrantless search and seizure" question.

In its opinion rendered June 9, 1995, erroneously reproduced in Petitioner's appendix as being entered Aggust (sic) 9, 1994, the Kentucky Court of Appeals held that "the [trial] court erred by finding that appellee's arrest was illegal." Its four-page opinion did not mention search, seizure, or the Fourth Amendment to the United States Constitution. Instead, the opinion was limited to deciding whether Kentucky

Revised Statute (KRS) 431.005(4) authorizes a county police officer to make an arrest outside the county in which he serves.

In Kentucky's trial, intermediate appellate, and supreme courts Petitioner phrased the issue as one of statutory interpretation. In his "Motion to Suppress," Petitioner argued to the trial court that the state "statute does not authorize county police officers to exercise jurisdiction outside of their county." As a result of the Jefferson County Police Officer's arrest of Petitioner in Bullitt County, Petitioner asked the trial court to suppress "all evidence obtained from and through Mr. Hood subsequent to his illegal arrest." Petitioner specifically asserted to the trial court that there was "no need to discuss the probable cause to arrest issues." The trial court agreed with Petitioner, ruling that the applicable state statutes rendered Petitioner's arrest invalid based upon *Churchwell v. Commonwealth*, 843 S.W.2d 336 (1993).

Upon Respondent's interlocutory appeal, the trial court's order was reversed and the case was remanded for trial. In his brief to the Kentucky Court of Appeals, Petitioner argued that "The trial court correctly ruled that Jefferson County police officer Gray had no authority as a peace officer to arrest Mr. Hood in Bullitt County...[and] there was no basis for a private citizens arrest." The Court of Appeals rejected his argument and reversed the trial court.

Petitioner next filed a motion for discretionary review with the Kentucky Supreme Court. There, Petitioner asserted

that "[t]he question which Movant asks this court to review and answer involves the quantum of evidence in the possession of a private person sufficient to empower the private person to make an arrest pursuant to KRS 431.005(4)." The Kentucky Supreme Court denied his motion without comment. Thus, through three levels of state court, none have decided any issue with respect to the Fourth Amendment to the United States Constitution. This Court should not "review" a state court order based on an argument which was not made to the state court. *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983), reh. Den. 463 U.S. 1237, 104 S. Ct. 33, 77 L.Ed.2d 1453. See also *Webb v. Webb*, 451 U.S. 493, 101 S.Ct. 1889, 68 L.Ed.2d 392 (1981); and *Street v. New York*, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969).

2. The opinion by the Kentucky Court of Appeals merely interpreted state statutes and did not involve a federal question.

The Kentucky Court of Appeals opinion expressly states that it involved "an appeal by the commonwealth from an order entered by the Jefferson Circuit Court adjudging [Petitioner's] arrest to be illegal...." The trial court had based its decision upon a Kentucky statute, KRS 70.540, ruling that county police officers had "jurisdiction coextensive with the whole county for which they are appointed." While the trial court found no exceptions, the Court of Appeals applied another state statute. It concluded that

KRS 431.005(4) authorized Petitioner's arrest and that the trial "court erred by finding that [Petitioner's] arrest was illegal." This court should not review judgements of state courts based upon interpretation of state statutes. *Duncan v. Tennessee*, 405 U.S. 127, 92 S.Ct. 785, 31 L.Ed.2d 86 (1972). Under either interpretation, no conflict arises with respect to federal authority. There is no constitutional right to be arrested by an officer in a particular uniform. See *United States v. Thompson*, 356 F.2d 216 (1965), Cert. Den. 384 U.S. 964, 86 S.Ct. 1591, 16 L.Ed.2d 675 (1966).

3. The state court's interlocutory opinion is not a final order.

The closing language of the Kentucky Court of Appeals Opinion expresses the effect of that Opinion: "For the reasons stated, the court's suppression order is reversed and this cause is remanded for further proceedings consistent with our views." Petitioner has not yet been convicted of anything, as his case is pending in the trial court. A case which has been remanded for trial should not be reviewed by this court. *Urie v. Thompson*, 337 U.S. 163, 69 S.Ct. 1018, 93 L.Ed 1282 (1949); see also *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 109 S.Ct. 916, 103 L.Ed.2d 34 (1989).

After Petitioner is tried and convicted in state court, he will have at least two opportunities to appeal under Kentucky law. If the search and seizure issue is decided against him, his remedy is a direct appeal of the conviction.

Thus, his claim is subject to further proceedings before it is ripe, if at all, for review by this Court. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981).

CONCLUSION

Respondent, the Commonwealth of Kentucky, respectfully requests this Court to deny the Petition for Writ of Certiorari to the Court of Appeals of Kentucky.

Respectfully Submitted,

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